



**RAMA
UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: ADVANCE LEGAL WRITING SKILL-I

SUBJECT CODE: BAL 108

LECTURE: 36

NAME OF FACULTY: Ms. Anjali Dixit

Lecture-36



Essentials of a plaint:

- The Plaint shall be presented in duplicate and comprise of the following:
- Name of the Court
- Name, description and place of residence of plaintiff and defendant
- Facts constituting the cause of action and when it arose
- Facts showing that the court has jurisdiction in the case
- Statement of value of the subject matter of the suit
- Reliefs claimed by the plaintiff
- Amount of claim in case of recovery suit
- Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished
- Where subject matter of suit is an immovable property, a description of the property
- Where the suit is time-barred, the ground upon which exemption from the Law of Limitation is claimed

When can the plaint be presented?

Plaint shall be presented to the Court on a working day and during office hours, however

a Judge may accept plaint at his residence after office hours also.

Who can present the plaint?

A plaint may be presented personally by the plaintiff or by a person duly authorized by him or his pleader.

Annexing of documents with the plaint

The plaintiff is required to enter in a list all the documents on which his plaint relies. Code of Civil Procedure, 1908 (CPC) further entails that the plaintiff shall deliver the documents and a copy of the documents along with the plaint. Further, a document which ought to be presented by the plaintiff at the time of presenting the plaint is not produced then the same will not be received in evidence.

2. Issue of Summons to the Defendant

Once the plaint is presented and admitted by the Court, the next step involves issuing of summons to the Defendant. The summons is issued to the Defendant to appear and answer the claim. As per Section 27 of CPC, a defendant is given a period of 30 days from the date of institution of suit to answer the claim.

The term “summon” has not been rendered any exclusive definition under the CPC, however in general parlance it refers to a notice that suit or legal proceedings have been filed and a person and to the person to whom summon is issued has to remain present.

Modes of Service of summons-

For defendant residing within jurisdiction the Court in which plaint is presented – Service of summon may be made by delivering or transmitting a copy of the summons by

1. Registered post acknowledgement due
2. Speed post
- Courier service provided by the High Court

1. Any other means of transmission of documents, including fax message and electronic mail services

For defendant not residing within jurisdiction of the Court in which plaint is presented— Order V Rule 9 (4) of Code of Civil Procedure, 1908 states that in such a case if the Court directs that the service of summons shall be made by any of the aforesaid (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply. Rule 21 provides for the service of summons where defendant resides within the jurisdiction of another Court.

Presumption of service of summons- A summon shall be taken to be duly served if the article containing the summon has been received back with the endorsement of the person authorized by the courier service that the defendant or his agent has refused to accept the summon.

Where summons or notice by registered post is sent at the given and correct address, there is a presumption of due service.

When there are 2 or more defendants?

When there are 2 or more defendants, then summon is to be served on each defendant. Where the defendant cannot be found?

Where the defendant cannot be found and has no agent authorized to accept service, then the service may be made on any adult member of the family of defendant.

In a suit relating to any business against a non-resident defendant, service may be made on the Manager.

In a suit for immovable property, summon can be served on any agent of the defendant in charge of the property, if the service cannot be made on the defendant in person and the defendant has no agent empowered to accept the service.

What is substituted mode for service of summon?

It implies that when summon cannot be served in an ordinary manner then substituted/ alternative mode for serving summon is used. It includes cases wherein the Defendant or his agent refuses to acknowledge service of summon or where defendant is able to successfully avoid service of summons.

In such cases, alternative modes for service of summon provided under Code of Civil Procedure, 1908 include affixing a copy of summon in some conspicuous place in the court house, and also on some conspicuous part of the house in which the defendant is known to have last resided or carried on business or personally worked for gain.

3. Inspection of Documents Referred to in the Plaint

Pursuant to serving of summon on the defendant, the defendant has to refer to a copy of the plaint and if any documents are referred to in the plaint, of which the defendant has not got copies, a notice shall be given to the plaintiff or his pleader to produce the documents for inspection.

MCQ

1. The Indian Contract Act, 1872 is dividend

into..... Chapters.

a) 3

b) 8

c) 10

d) 12

2. The Law of Contract is noting but

a) A child of commercial dealing

b) A child of religion

c) A child of day to day politics

d) A child of economics

3. The Contract Act came into force

a) From 1 September, 1872 but with retrospective effect

b) Before 1 September, 1872

c) From 1 September, 1872

d) After 1 September, 1872

4. The Contract Act applies to

a) Contracts made before 1

September,

1872

b) Contracts made on 1 September, 1868

c) Contracts made before 1 September,

1872 and to be enforced after 1 September, 1872

d) Contracts made on and after 1 September, 1872

5. An Indian mercantile law is based upon

a) Indian culture

b) British culture

c) England law

d) American law